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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)
54151.07US1

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on ___February 10, 2006___

Signature _Vivian DelaRosa_
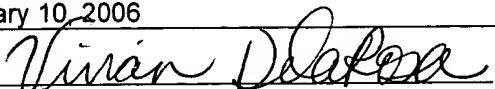
Typed or printed
name Vivian DelaRosa

Application Number	Filed
09/778,311	02/07/2001

First Named Inventor
Kevin Callahan

Art Unit	Examiner
3623	Sterrett, Jonathan G.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
    Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record.
Registration number 35,906

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____
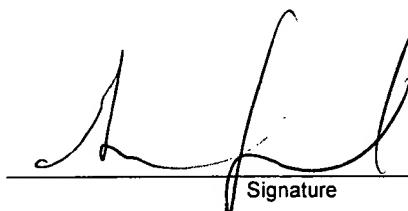
_____
Signature

Gary R. Jarosik
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(312) 456-8449
_____
Telephone number

February 10, 2006
_____
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

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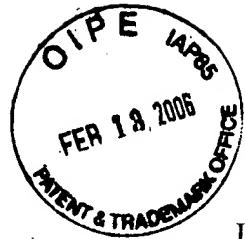
PRE-APPEAL REVIEW REQUEST

In the application claims 1-19 remain pending and stand twice rejected. Specifically, the claims stand rejected under 35 U.S.C. § 103 as being rendered obvious primarily in view of a combination of "Whirlpool.com" and "PointServe.com." The reconsideration of the rejection of the claims is, however, respectfully requested.

In response to the rejection of the claims, it is respectfully submitted that the combination of "Whirlpool.com" and "PointServe.com" fails to include each and every element set forth in the claims, considering each and every word, as is required to maintain a *prima facie* case of obviousness. More particularly, it is respectfully submitted that the passages from within "PointServe.com" relied upon in the rejection of the claims simply cannot be said to expressly disclose or inherently disclose, i.e., "make clear that the missing descriptive matter is necessarily present in the thing described and that it would be so recognized by persons of ordinary skill," the claim elements which the Examiner has acknowledged are missing from "Whirlpool.com" in the first place.

It has been acknowledged that "Whirlpool.com" fails to disclose, teach, or suggest at least the *combination* of claims elements directed to "determining at the server device multiple available repair time slots based on at least one of the appliance identifier and the geographical identifier provided by the customer; transmitting data indicative of the multiple available time slots from the server device to the client device via the wide area network to thereby allow customers to select at least one of the multiple available repair time slots; and receiving time slot selection data at the server device from the client device via the wide area network, the time slot selection data indicating a desire by the customer to have the first home appliance repaired in the one of the multiple available time slots selected by the customer." It is respectfully submitted that "PointServe.com" likewise fails to disclose this *combination* of claim elements and, as such,

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cannot be said to suggest modifying "Whirlpool.com" to arrive at the invention set forth in the claims.

Turning now to the "PointServe.com" references, namely, cited references W1, V1 and U1, it has been asserted that reference V1 discloses on page 2, paragraph 8, lines 1-3 the claimed element of "determining at the server device multiple available time slots based on at least one of the appliance identifier and the geographic identifier provided by the customer." While this passage does disclose using "geographic information systems (GIS) routing capabilities" as asserted in the rejection of the claims, what is <u>not</u> expressly or inherently disclosed within the cited passage, or anywhere else in the "PointServe.com" references, is that the "geographic information systems (GIS) routing capabilities" *are ever used to determine multiple available time slots which are <u>thereafter, in keeping with the remainder of the claim elements</u>, transmitted to a client device whereby a consumer may selected one of the time slots for use in scheduling a repair.* Rather, this cited passage describes nothing more than the fact that the "geographic information systems (GIS) routing capabilities" are used by the "ServiceXchange" component of the system and that the "ServiceXchange" component of the system is used by <u>service providers</u> to do nothing more than manage, in real-time, the scheduling, routing, tracking, and delivery elements of their services, i.e., to manage service personnel *to meet already scheduled service appointments.* Thus, it is respectfully submitted that this cited passage from the "PointServe.com" references simply cannot be said to evidence that it would have been obvious to modify "Whirlpool.com" to include "determining at a server device multiple available repair time slots based on at least one of the appliance identifier and the geographic identifier provided by the customer and transmitting data indicative of the multiple available repair time slots [<u>so determined</u>] from the server device to the client device via the wide area network to thereby allow a customer to select at least one of the multiple available repair time slots..." as is claimed

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in combination. For at least this reason it is respectfully submitted that the cited references fail to present a *prima facie* case of obviousness and the rejection must be withdrawn.

Now, as concerns the consumer selecting a time slot for use in scheduling a repair, while cited to reference W1 at page 1, paragraph 6, lines 1-3, reference U1 at page 1, paragraph 5, lines 1-4, and reference V1 at page 2, paragraph 2, lines 1-2, may describe making repair time slots available to the consumer for selection via a network client device, what is **not** expressly or inherently described within the cited passages or anywhere else in the "PointServe.com" references is that the repair time slots that are made available to the customer for selection are those that have been, *in keeping with claim language,* determined at the server device based on at least one of the appliance identifier and the geographical identifier provided by the customer. Rather than disclose, teach, or suggest this specific aspect of the claimed invention, "PointServe.com," as acknowledged but apparently later <u>disregarded</u> when rendering the determination of obviousness, discloses a system, as seen in reference U1 at page 1, paragraph 5, lines 1-4, in which the consumer merely selects a repair time slot from a list of all repair slots that have not already been assigned. In the "PointServe.com" references, while the consumer is able to select from "open spaces in a company's schedule," it is **not** disclosed, taught, or suggested that the "open spaces" from which the consumer may select are in any way "determined" using anything other than by checking for times that service personnel presently have free. Thus, it is respectfully submitted that these cited passages from the "PointServe.com" references simply cannot be said to evidence that it would have been obvious to modify "Whirlpool.com" to include "determining at a server device multiple available repair time slots based on at least one of the appliance identifier and the geographic identifier provided by the customer and transmitting data indicative of the multiple available repair time slots [<u>so</u> <u>determined</u>] from the server device to the client device via the wide area network to thereby

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allow a customer to select at least one of the multiple available repair time slots..." as is claimed *in combination.* For at least this reason it is respectfully submitted that the cited references fail to present a *prima facie* case of obviousness and the rejection must be withdrawn.

In sum, it will be appreciated that the "PointServe.com" references fail to disclose, teach, or suggest that which has been acknowledged to be missing from "Whirlpool.com." Furthermore, it will be appreciated that the "PointServe.com" references suggest a system that is in direct contrast to that which is claimed. In particular, rather than disclose, teach, or suggest a system in which one of an appliance identifier and geographical identifier provided by a customer is first used to determined multiple available repair time slots after which the multiple available repair time slots are provided to a consumer to thereby allow the consumer to select one of the multiple available repair time slots in which to schedule a repair, the "PointServer.com" references suggest a system in which a user is first presented with nothing more than a list of all open repair time slots from which the user may select one in which to schedule a repair and a system which then uses "geographic information systems (GIS) routing capabilities" to allow the service provider to manage, in real-time, the scheduling, routing, tracking, and delivery elements of their services, i.e., to manage the scheduling, routing, tracking, of their service technicians to thereby ensure that at least one service technician will be available to meet the consumer within the repair time slot already scheduled by the consumer. Accordingly, having demonstrated that "PointServe.com" fails to include the disclosure required to support a *prima facie* case of obviousness and in facts teaches away from the invention claimed, it is respectfully submitted that the rejection under 35 U.S.C. § 103 must be withdrawn.

It is additionally respectfully submitted that the Examiner's "Response To Arguments" in the latest Office Action demonstrates that the rejection of the claims is based upon hindsight knowledge impermissibly derived from the Appellants' disclosure. For example, in the

Examiner's "Response To Arguments" the Examiner has asserted that the "PointServe.com" system allows a consumer to schedule their own calls (ignoring the fact that it is a selection made from all open repair time slots), has asserted that the "PointServe.com" system finalizes the schedule slot *when the consumer requests it* (ignoring the fact that this processing is not performed *prior* to the consumer being presented time slots for selection), and has asserted that the "PointServe.com" system takes into account a customers location in the routing and scheduling of service calls (ignoring the fact that this refers to nothing more that the service provider using the system to ensure a technician is available to meet an already scheduled service call) to thereby evidence that it would have been obvious to modify "Whirlpool.com" to arrive at the invention claimed. As will be apparent, what is missing from the Examiner's "Response To Arguments" is any express assertion that the "PointServe.com" system actually discloses providing to a consumer multiple available repair time slots which are determined, prior to their presentation to the consumer, based on one of a geographic identifier or appliance identifier. Accordingly, it is evident that from the Examiner's "Response To Arguments" that: a) the "PointServe.com" references fail to disclose the claim elements that are missing from "Whirlpool.com" as argued by the Appellant; and b) that the Appellants' disclosure had to be used as a template to piece together the disparate cited passages from the "PointServe.com" references and, furthermore, that the Appellants' disclosure had to be used to infer what the combined, disparate passages might suggest to one of skill in the art. For this yet further reason it is respectfully submitted that a *prima facie* case of obviousness has not been established and the rejection of the claims must be withdrawn.